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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Further Forbearance from
Title II Regulation for Certain
Types of Commercial Mobile Radio
Service Providers

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) GN Docket No. 94-33
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COMMENTS OF GEOTEK COMMUNICATIONS, INC.

Geotek Communications, Inc.

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STATEMENT OF INTEREST

Through its subsidiaries, Geotek Communications Inc. ("Geotek") holds authorizations in the 900 MHz frequency band of the Specialized Mobile Radio ("SMR") service. In GN Docket No. 93-252, the Commission has, inter alia, adopted rules to implement the basic provisions of Sections 3(n) and 332 of the Communications Act (the Act), as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486 (released March 30, 1994)("Report and Order"). As primarily a 900 MHz SMR provider that utilizes innovative and spectrally efficient technology on a "wide-area" basis to deliver innovative dispatch services to business customers, Geotek has a direct interest in the regulatory treatment of the SMR service.

COMMENTS

I. THE NATURE OF A CMRS PROVIDER'S CUSTOMER BASE SHOULD BE AN IMPORTANT CONSIDERATION IN DETERMINING WHETHER TO APPLY FURTHER FORBEARANCE

Section 332(c)(1)(A) of the Communications Act of 1934¹ authorizes the Commission to forbear from applying specific provisions of Title II to certain Commercial Mobile Radio Service ("CMRS") providers if the following three-part test ("Forbearance Test") is met:

- i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly discriminatory;
- (ii) enforcement of such provision is not necessary for the protection of consumers; and
- (iii) specifying such provision is consistent with the public interest.

As the Commission states in the Notice of Proposed Rule Making initiated to implement this provision, GN Docket 94-33 ("Forbearance Notice"), the legislative history of this provision indicates that the Commission may distinguish among types of CMRS.²

¹ 47 U.S.C. § 332(c)(1)(A).

² See Forbearance Notice at para. 4 (citing H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 491 (1993)).

In Section III of the Forbearance Notice, the Commission seeks comment on a variety of factors to determine whether to apply further forbearance to certain CMRS providers. Specifically, the Commission states that one factor may be whether a CMRS provider's customer base is targeted primarily to business customers for their business communications needs.³ The Commission notes that because business customers may have relatively greater bargaining power and information concerning their telecommunications options than individual customers, further forbearance may be justified on this basis.⁴

Geotek and other firms providing SMR service have in the past provided dispatch service to business customers on a private carrier basis. These business customers can choose from a number of SMR providers or they can provide dispatch services themselves. In fact, only ten percent of the two-way dispatched vehicles in the U.S. are served by SMR providers. The large majority of companies with a mobile communications workforce are served by their own internal-use only communications system. Because the firms that use their own systems do not offer communications services "for profit", they will not be reclassified as CMRS and their dispatch communications systems will not be required to meet the obligations of Title II of the Communications Act. On the other hand, business customers with mobile

³ Forbearance Notice at para. 37.

⁴ Id.

communication needs are unlikely to establish their own cellular-like telephony service. Therefore, the business customer of dispatch services has more telecommunications options than the business customer of cellular.

Some of the newly reclassified SMRs that have expressly indicated they will provide both dispatch and cellular services have designed their business plans and network architectures for both types of service. These so-called Enhanced Specialized Mobile Radio ("ESMR") providers will directly compete with cellular carriers to serve the general public. Other SMR providers including Geotek have designed their business plans and network architecture to provide innovative dispatch services to business customers and not to serve the general public. A typical Geotek customer, for example, operates a mobile workforce with 10 to 200 vehicles and is primarily interested in fleet communication services. The distinction between the customer bases of ESMRs providing cellular-like services (i.e., the general public) and SMRs providing traditional dispatch services (i.e., only business customers) should be an important consideration in the application of Title II requirements to newly reclassified CMRS providers.

Geotek strongly recommends that the Commission consider the "customer base" as an important part of its analysis to determine whether to further forbear the specific provisions of Title II. As noted in the Forbearance Notice, business customers are more informed and have greater bargaining power than individual

customers.⁵ For example, a Geotek business customer relies on two-way radios in its vehicles for dispatch communications in order to meet its business communications needs. By necessity, this business customer is intimately aware of its communications service options and its requirements. In addition, because each such dispatch business customer is likely to negotiate on behalf of numerous end users, the business customer is in a better position to negotiate for competitive services than an individual customer. Moreover, the dispatch business customer, unlike the cellular-like service customer, always has the option of not negotiating with an SMR provider and instead establishing its own internal-use dispatch system. As noted above, the overwhelming majority of companies with a mobile communications are served by their own internal-use system. Therefore, in contrast to a generally available service, a business customer service does not require the same degree of Title II protection.

In addition, Geotek recommends that for a CMRS provider serving only business customers, the Commission need not further analyze the business customer base to distinguish between large, medium and small business customers for purposes of further forbearance.⁶ Geotek submits that even small business customers possess significantly greater bargaining power than individual customers and therefore

⁵ Id.

⁶ Id. (wherein the Commission asks whether it should also distinguish between business customers on the basis of size "on the assumption that small businesses may be more like individual consumers in their bargaining power over telecommunications services.").

do not require the same degree of Title II protections as individual customers. For example, the bargaining power of a small taxi company with modest annual revenues is greater than that of an individual because, as noted above, the taxi company will negotiate with a carrier on behalf of a numerous vehicular end users. The small taxi company also has the option (and with it, the negotiating leverage) to choose to establish its own internal-use dispatch system like many of its like-sized peers in its industry. In addition, because its two-way communications service is vital to its business, the taxi company is likely to be well informed about its particular communications needs. Therefore, the relative size of a CMRS provider's business customers is not relevant to the issue of further forbearance.⁷

II. THE COMMISSION SHOULD FORBEAR FROM APPLYING SECTION 225 TO CMRS PROVIDERS WITH A BUSINESS CUSTOMER BASE

Enacted as part of the Americans with Disabilities Act of 1990 ("ADA"), Section 225 of the Communications Act -- Telecommunications Relay Services ("TRS") -- requires all common carriers providing interstate or intrastate telephone voice transmission service to provide telecommunications services that

⁷ Geotek submits that it would be virtually impossible for a CMRS provider to precisely determine the relative size of its business customers -- at least without thoroughly alienating its customer base. In addition, because the Forbearance Notice did not contain proposed definitions for "large", "medium" and "small" customers, the Commission cannot adopt such a final rule. 5 U.S.C. § 553.

enable persons with hearing and speech disabilities to communicate with hearing individuals by providing TRS throughout their service area.

Geotek submits forbearing the application of Section 225 to CMRS providers with business customer bases is consistent with the three-part Forbearance Test.⁸ With respect to the first part, the forbearance of Section 225 would not be "unjustly discriminatory" for purposes of the Forbearance Test because such forbearance would be consistent with legislative intent of Section 225. As interpreted by the Commission, the legislative intent of Section 225 was "to further the [Communications] Act's goal of universal service by providing individuals with hearing or speech disabilities telephone services that are functionally equivalent to those provided to individuals without hearing or speech disabilities."⁹ CMRS providers with specialized customer bases, by definition, do not serve the Communications Act's goal of universal service, and therefore were not intended by Congress to be within the scope of this requirement. Therefore, forbearing the application of Section 225 to CMRS providers with business customers would be consistent with its legislative intent and would not be "unjustly discriminatory".

The legislative intent of Section 225 to limit its applicability is consistent with the marketplace reality of the dispatch SMR service. For example, the users

⁸ 47 U.S.C. § 332(c)(1)(A).

⁹ Report and Order and Request for Comments, CC Docket No. 90-571, 6 FCC Rcd 4657 (1991)(emphasis added).

of dispatch SMR services are typically engaged in a trade in which they remain in constant contact with a dispatcher by way of a two-way radio installed in their vehicle. Therefore, it is unlikely that such users that have chosen a trade that relies on dispatch services would require TRS.

In addition, when Congress later permitted the Commission to differentiate among CMRS services for purposes of applying further forbearance,¹⁰ Congress affirmed that certain CMRS providers with specialized customer bases may not require the same level of consumer protection as CMRS providers with individual customer bases. Therefore, forbearing the application of TRS to such providers would also not be "necessary for the protection of consumers" for purposes of the second part of the Forbearance Test. Thus, Geotek submits that Commission should find such forbearance to be consistent with both the public interest and, as a result, the Forbearance Test. Accordingly, Geotek recommends that the Commission reject application of Section 225 to CMRS providers with a business customer base.

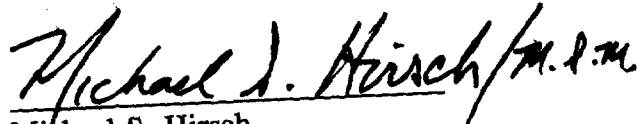
¹⁰ See note 2, supra.

III. CONCLUSION

Geotek recommends that for purposes of applying forbearance to CMRS providers, the Commission should examine the nature of the customer base. The Commission should find that CMRS providers with business customer bases do not require the same degree of consumer protection requirements as CMRS providers with customer bases comprised of individual customers. Specifically, the Commission should forbear from applying Section 225 of the Communications Act to CMRS providers with business customer bases.

Respectfully submitted by:

Geotek Communications, Inc.


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Vice President-External Affairs